



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/607,975

06/30/2003

Carol L. Erdman

34315-185

6951

1912

7590

07/10/2009

AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE
NEW YORK, NY 10016

EXAMINER

SU, SUSAN SHAN

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

07/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/607,975	Applicant(s) ERDMAN, CAROL L.	
	Examiner SUSAN SU	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,7-9,12,13,15,18-26 and 54-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5,7-9,12,13,15,18-26 and 54-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 3, 2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 5, 7-9, 12, 13, 15, 18-26, and 54-58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 5 has been amended to read that each of the front and back elastic portions include a central elastic portion and two side elastic portions wherein the central portions contact each other in a longitudinal direction. Upon review of the original disclosure, the amended claim combines the embodiment of Figure 3 with that of Figure 5. However, the Specification has never disclosed that the features of the two

Art Unit: 3761

embodiments may be combined. The Examiner therefore asserts that the subject matter in the instant claim is new matter. Furthermore, there is no support in the original Specification for “the two first side elastic portions having reduced elastic force as compared to that of the first elastic portion” or “the two second side elastic portions having reduced elastic force as compared to that of the second elastic portion.”

The claim language “said first and second elastic portions having a lateral width less than a lateral width of the main chassis” is also not described in the Specification. While Figs. 5, 6, and 8-14 show elastic portions with a lateral width less than that of the main chassis, but these elastic portions appear to comprise only of a central elastic portion and do not include “side elastic portions.” Meanwhile, the embodiments that are clearly shown to comprise both central and side elastic portions (e.g. Figs. 1-4 and 7) do not show that the elastic portions have smaller lateral widths than the chassis.

Claims 7-9, 12, 13, 15, 18-26, and 54-58 are dependent on Claim 5 and are rejected at least for the above reasons.

In addition, Claim 9 as amended recites substantially an edge-to-edge attachment between the first and second elastic portions and the main chassis. It is noted that the original disclosure does not provide support for first and second elastic portions that overlaps with a portion of the main chassis while also have a substantially edge-to-edge attachment with the main chassis. On page 14 lines 26-27 (or [0049] of the Application Publication 2004/0267222), it was disclosed that the first and second elastic portions would be attached to the main chassis in an edge-to-edge or overlapping fashion, but not both. No further description of the attachment between the

Art Unit: 3761

first and second elastic portions with the chassis is offered elsewhere in the Specification.

Response to Arguments

4. Applicant's arguments with respect to claims 9, 12, 13, and 15 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendments to the claims.

Allowable Subject Matter

5. Claims 5, 7-9, 12, 13, 15, 18-26, and 54-58 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action. As indicated above, the amendments to the claims have introduced new matter that is not supported by the Specification. Applicant may overcome the 35 U.S.C. 112 rejection by removing the new matter or explain in detail how the above limitation is supported by the original disclosure.

Provided that the situation with the above 35 U.S.C. 112, 1st paragraph is resolved, the claims are allowable for the following reasons:

The closest prior art of record, Lippert et al. (US 4,861,652) teaches an absorbent article with first and second elastic portions (which are also the central elastic portions since they are located centrally with respect to the longitudinal axis of the article) that replace a portion of the main chassis, wherein the elastic portions have regions that overlap with the main chassis and regions that do not overlap. Lippert teaches that there are side *inelastic* portions instead of the claimed *elastic* portions that extend in the lateral direction from the elastic portions. Lippert also does not teach that

Art Unit: 3761

the central elastic portions contact each other and extend in a longitudinal direction toward the crotch portion.

Another prior art of record Ying et al. (US 6,245,401) teaches an absorbent article with first and second elastic portions (which are also the central elastic portions since they are located centrally with respect to the longitudinal axis of the article) that replace a portion of the main chassis, wherein the central elastic portions contact each other and extend in a longitudinal direction toward the crotch portion. However, Ying does not teach side elastic portions and the elastic portions do not *overlap* with the chassis in any region.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morman et al. (US 4,655,760) teaches an absorbent article with front and back central elastic portions that contact in the crotch region but these elastic portions do not overlap with the main chassis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN SU whose telephone number is (571)270-3848. The examiner can normally be reached on M-F 9:00AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susan Su/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761